

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE	§	
PETITION OF PETER T.	§	No. 62, 2011
KOSTYSHYN FOR A WRIT OF	§	
MANDAMUS.	§	Cr. ID No. 0908020496

Submitted: March 4, 2011
Decided: March 10, 2011

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices.

ORDER

This 10th day of March 2011, upon consideration of the petition for a writ of mandamus filed by Peter T. Kostyshyn and the answer and motion to dismiss filed by the State of Delaware, it appears to the Court that:

(1) On September 14, 2009, the petitioner, Peter T. Kostyshyn, was indicted on charges of Aggravated Menacing, Terroristic Threatening, and Possession of a Weapon During the Commission of a Felony. On February 23, 2010, after a hearing, the Superior Court granted defense counsel's motion to withdraw and ruled, pursuant to *Bultron v. State*, that Kostyshyn had waived his right to appointed counsel.¹

(2) Kostyshyn proceeded *pro se* at his jury trial. On November 24, 2010, the jury convicted Kostyshyn of the charged offenses. On February

¹ See docket at 32, *State v. Kostyshyn*, Del. Super., Cr. ID No. 0908020496, (Feb. 23, 2010) (hearing on defense counsel's motion to withdraw). *See also Bultron v. State*, 897 A.2d 758 (Del. 2006) (holding that Superior Court did not err when concluding that defendant's obstructive conduct forfeited his right to counsel).

11, 2011, the Superior Court sentenced Kostyshyn to a total of twelve years at Level V suspended after seven years for decreasing levels of supervision.

(3) On February 14, 2011, Kostyshyn filed a *pro se* appeal from his Superior Court conviction and sentencing.² In connection with the appeal, Kostyshyn also requested the appointment of counsel. By Order dated March 2, 2011, this Court remanded the matter to the Superior Court to determine if Kostyshyn is indigent and, if so, to appoint counsel to represent Kostyshyn on appeal and to order the preparation of transcript.³

(4) In his petition for a writ of mandamus, Kostyshyn appears to primarily challenge the Superior Court's February 23, 2010 ruling requiring that he proceed to trial without appointed counsel.⁴ Kostyshyn's petition offers no basis upon which to grant mandamus relief.

(5) A decision by the Superior Court to try a criminal defendant in the absence of counsel may be found on appeal to be an abuse of discretion and prejudicial error. It does not, however, form a basis for mandamus relief when the petitioner has an adequate and complete remedy at law, such as in

² The appeal is proceeding as *Kostyshyn v. State*, Del. Supr., No. 71, 2011.

³ See docket at 14, *Kostyshyn v. State*, Del. Supr., No. 71, 2011, Ridgely, J. (Mar. 2, 2011) (remanding with jurisdiction retained for further proceedings).

⁴ To the extent Kostyshyn challenges other trial court rulings and/or makes other claims that are less clear, the petition does not invoke the Court's jurisdiction.

this case, wherein the petitioner, Kostyshyn, has availed himself of his right to appeal.⁵

NOW, THEREFORE, IT IS ORDERED that the State's motion to dismiss is GRANTED. Kostyshyn's petition for a writ of mandamus is DISMISSED.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

⁵ *Petition of Bordley for a Writ of Mandamus*, 545 A.2d 619, 620 (Del. 1988).